

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JODY GULICK)	
Claimant)	
VS.)	
)	Docket Nos. 248,058 & 259,559
USD 308)	
Respondent)	
AND)	
)	
KANSAS ASSOCIATION OF SCHOOL BOARDS)	
Insurance Fund)	

ORDER

Respondent and its insurance fund appealed the January 8, 2001 preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore.

ISSUES

Docket #259,559 is a claim for a September 9, 1999 back injury and an alleged series of accidents for each and every day that claimant worked after that date through December 7, 1999. Respondent and its insurance fund admit that claimant injured her back while working on September 9, 1999, but deny that claimant sustained additional injury after that date.

The issue before the Judge at the preliminary hearing was whether claimant's present need for medical treatment was from her work-related back injury or whether claimant had subsequently sustained a new and independent noncompensable injury. The Judge determined that claimant had not sustained a new and independent accident and, therefore, granted claimant's request for medical benefits.

Respondent and its insurance fund contend Judge Moore erred and that the preliminary hearing Order should be reversed. They argue that claimant's present need for medical treatment was caused by a June 2000 "subsequent intervening accident that extinguishes the school district's liability for benefits."

On the other hand, claimant contends the preliminary hearing Order should be affirmed. Claimant acknowledges that she had a flare-up of symptoms in June 2000 while

doing laundry at home but she argues that it was a natural consequence of the back injury that she sustained at work.

The only issue before the Board on this appeal is whether claimant's present need for medical treatment is related to an accidental injury that she sustained at work or whether the present need for treatment is from a new and independent noncompensable accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

1. The preliminary hearing Order should be affirmed.
2. The parties agreed that claimant injured her back while working for respondent on September 9, 1999. Despite ongoing symptoms, claimant continued to work through approximately December 7, 1999.
3. Following the September 9, 1999 accident, claimant experienced ongoing pain in her back and in her left leg to her foot. Claimant also experienced symptoms in the right leg following that accident but the symptoms in the right leg were not as severe or prevalent as those in the left. Furthermore, claimant experienced a flare-up of right leg symptoms following a cortisone injection administered by Dr. John Knudsen, III.
4. In June 2000, claimant experienced a flare-up of symptoms while bending over at home. Claimant described the incident as follows:

And I washed a load of towels, probably seven, eight towels, maybe a couple wash rags [sic] in there, and it's nice out and I like to hang them out to dry and, you know, put them in the basket, bent over, and that's probably like the umpteenth time I've did it, and I bent over and I don't know if it maybe pinched it a little bit more or what, but it just made the pain, you know, even worse than . . .¹

Following the June 2000 incident, claimant experienced significant pain down both legs.

5. Dr. Terrance C. Tisdale, one of claimant's treating physicians, wrote a letter dated July 25, 2000, answering the question of whether claimant's June 2000 incident was a direct consequence of the initial work-related back injury or whether claimant had sustained a new and independent accident. The doctor wrote, in part:

¹ Preliminary Hearing, January 5, 2001; p. 12.

The second questions [sic] asks whether it is related to her initial back injury. I would suspect so. I saw her first about it in November 1999, and at that time she said she had had the back pain beginning in September. Since then she has had visits to the chiropractor, to Dr. Dorey, to us, to Dr. Stein, to Dr. Knudsen, and all of this has been directed at treated [sic] the low back pain. She has never completely resolved the problem. The problem is somewhat ill defined, but it appears to me that it is a continuation of the events that occurred initially in September 1999.

On September 19, 2000, Dr. Tisdale wrote respondent and its insurance fund's attorney and advised that more likely than not the June 2000 incident was "a muscular thing of short duration."

6. The Board finds and concludes that the flare-up of symptoms that claimant experienced when bending over in June 2000 was a direct and natural consequence of the back injury that she sustained at work. At this juncture of the claim, the evidence fails to establish that claimant has sustained a new and independent accident for which respondent and its insurance fund would be absolved of liability.

WHEREFORE, the Board affirms the January 8, 2001 preliminary hearing Order. The Board dismisses the appeal in Docket #248,058, which is a claim for bilateral upper extremity injuries, as the Judge issued no order in that proceeding and it appears the claimant included that docket number in her application for review by error.

IT IS SO ORDERED.

Dated this ____ day of March 2001.

BOARD MEMBER

c: Matthew L. Bretz, Hutchinson, KS
Anton C. Andersen, Kansas City, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director